

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESUS DIAZ,

Plaintiff,

v.

K. BOTMI, et al.,

Defendants.

No. 2:24-cv-1417 DAD AC P

FINDINGS AND RECOMMENDATIONS


Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On November 25, 2024, defendants filed a motion to dismiss. ECF No. 24. On January 3, 2025, plaintiff was ordered to file an opposition or a statement of non-opposition to the pending motion within twenty-one days. ECF No. 25. In the same order, plaintiff was informed that failure to file an opposition would result in a recommendation that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Id. The twenty-one-day period has now expired, and plaintiff has not filed a response to the motion for summary judgment or otherwise responded to the court's order. In recommending this action be dismissed for failure to prosecute, the court has considered "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives." Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th

1 Cir. 1992) (citation omitted). Because this case cannot move forward without plaintiff's
2 participation, the court finds the factors weigh in favor of dismissal.

3 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be
4 dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 DATED: February 10, 2025

14 
15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
17
18
19
20
21
22
23
24
25
26
27
28